IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.12.2018

DELIVERED ON : 24.01.2019

CORAM
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A. Nos.2724 and 2739 of 2018
and
CMP.Nos.20600 and 20773 of 2018

1.P.Rajasekar
2.R.Usha Rani
3.P.Ramkumar
4.R.Rajeswari
5.P.Mangayarthilagam ... Appellants/Petitioners/ Plaintiffs in both CMAs

vs

1.Prem Educational Trust,
68B, MC Road, Ambur-635 802.

2.K.Pandurangan
3.P.Baby alias Yuvarani
4.P.Suresh Babu
5.P.Ramesh Babu
6.S.Sujatha .. Respondents/Respondents/ Defendants in both CMAs

Civil Miscellaneous Appeals filed under Order 43, Rule 1 of the Code of Civil Procedure, 1908 against the order dated 24.10.2018 passed in I.A.Nos.62 and 63 of 2018 in O.S.No.10 of 2018 on the file of the III Additional District Court, Vellore @ Tirupattur.

(In both CMAs)
For Appellants : Mr.V.Raghavachari
For Respondents : Ms.S.Thamizharasi

COMMON JUDGMENT

These Civil Miscellaneous Appeals have been filed against the order dated 24.10.2018 passed in I.A.Nos.62 and 63 of 2018 in O.S.No.10 of 2018 on the file of the III Additional District Court, Vellore @ Tirupattur.

2. Since the issue involved in the appeals are one and the same and also the parties are one and the same, both the appeals were heard together and disposed of by this common judgment. For the sake of convenience, the parties are referred to as per their array in the suit.

3. The appellants are plaintiffs and the respondents are defendants in the suit. The plaintiffs have filed the suit seeking the following reliefs:

(a) Declaring the Resolution dated 05.11.2017 allegedly passed by the defendants 2 to 6 removing the plaintiffs from the trusteeship of the 1st defendant trust, as null and void, arbitrary, contrary to law, the registered trust deed and in violation of principles of natural justice.

(b) Declaring the supplemental deed of trust registered on 09.11.2017 as Document No.70/2017 as null and void.

(c) Declaring and restoring the 1st plaintiff as founder trustee for life of the 1st defendant trust as well as the plaintiffs 2 to 5 as trustees.

(d) Permanent injunction restraining the defendants 2 to 6, their men, agents and subordinates or any one claiming through them fro preventing the plaintiffs from discharging their function as trustee of the 1st defendant trust.

(e) Mandatory injunction to the defendants 2 to 6 to collect fees from students admitted to future school during the ensuing academic year 2018-19 only through the Bank account maintained by the 1st defendant trust in State Bank of India, Main Branch with Account No.33850373275 and to submit proper accounts for such fees.

(f) Directing the 2nd to 6th defendants jointly and severally to pay a compensation of Rs.10,00,000/- (Rupees Ten Lakhs only) as damages for the pain, mental agony and harassment caused to the plaintiffs.

(g) Directing the 2nd to 6th defendants to pay cost.

4. Along with the suit, the plaintiffs have filed I.A.Nos.62 and 63 of 2018 for interim injunctions. The prayer sought for in the aforesaid Interlocutory Applications is as under:

(i) I.A.No.62 of 2018 seeking ad interim mandatory injunction to the defendants 2 to 6 to collect fees from students admitted to Future School during the ensuing academic year 2018-19 only through the Bank account of the 1st defendant trust maintained in State Bank of India, Ambur Main Branch with Account No.33850373275 and to submit proper accounts for such fees.

(ii) I.A.No.63 of 2018 seeking interim injunction restraining the defendants 2 to 6, their men, agents and subordinates or any one claiming through them from preventing the plaintiffs from discharging their function as trustee of the 1st defendant trust.

5. The case of the plaintiffs as stated in the affidavit filed in support of the Interlocutory Applications is as follows: The 1st plaintiff is the founder of the 1st defendant trust and 1st plaintiff appointed himself as the Chairperson of the Board of Trustees for life. The Board of Trustees by a majority resolution remove any trustee from the trust if such trustee failed to abide the rules and regulations of the trust or acted in any manner adverse to the interest of the trust. The trust established a school in the name and style of "Future School" with due permission and recognition from the Government of Tamil Nadu in the property of the defendants. The 1st plaintiff extended huge money as loans for the purpose of construction of the school and as on date 440 students are studying in the school. The 1st plaintiff as the Chairperson of the Board of Trustees had acted in a transparent manner, conducting the affairs of the trust and the school and all accounts were properly audited by the Chartered Accountant and at no point of time, he held secret to himself any affairs of the trust as well as the school.

6. In 2015, loan of Rs.2.05 Crores was availed from State Bank of India, Walaja Branch to expand the school by putting up additional construction and the whole transaction was conducted through Bank accounts and at no time any of the trustees did avail any sums thereof for their personal use or in any manner to themselves adverse to the interest of the trust or the school.

7. The 3rd plaintiff established a separate company in the name and style of Ramaraj Industries Limited, through which the plaintiffs have established a shoe manufacturing factory and the manufacturing operations were conducted by obtaining commercial orders, which were executed due to various market factors and the company became inviable and operations were stopped at or about January, 2017. The company had raised loans with Banking Institutions for the purpose of operation of the company. Since the business itself became inviable, the Banks sought repayments of credits and since proceedings were initiated, the company has proceeded against the Banks before the Debts Recovery Tribunals and obtained orders in its favour. All these had nothing to do with the 1st defendant trust, nor were the other defendants connected with any of these transactions.

8. While things stood thus, the defendants 2 to 6 joined together and was attempting to usurp the entire affairs of the trust as well as the school to themselves. Even without any basis, the defendants 2 to 6 have issued notice dated 27.10.2017 with false allegations and called upon a meeting on 05.11.2017 at 10.30 A.M. for the purpose of removing the plaintiffs from the trust to usurp the trust, school and the properties thereof. According to the plaintiffs, the defendants 2 to 6 were not the competent persons, nor legally entitled to call for such meeting. On 02.11.2017, the plaintiffs have sent a suitable reply to the notice dated 27.10.2017 issued by the defendants 2 to 6.

9. The 1st plaintiff came to understand that the defendants 2 to 6 have unilaterally resolved removing the plaintiffs from the 1st defendant trust and in furtherance of such illegal action, they had registered a supplemental deed of trust by removing the plaintiffs and by illegally inducting themselves to be the only trustees. According to the plaintiffs, the action of the defendants 2 to 6 caused pain and mental agony to the plaintiffs for no fault on them.

10. On 01.12.2017, as Chairperson, the 1st plaintiff called upon a meeting of the trust on 10.12.2017. However, the defendants 2 to 6 sent their reply dated 8.12.2017 containing false averments. On 15.12.2017, when the plaintiffs attempted to enter into the school premises, the defendants 2, 4 and 5 prevented them from entering into the premises and abused them with dire consequences. The plaintiffs have also lodged a police complaint before Ambur Taluk Police Station and the complaint has been registered in CSR No.278 of 2017 and the investigation is pending.

11. The plaintiffs apprehend that the defendants 2 to 6 will usurp to themselves fees to be remitted by the students without maintaining proper account. Unless the defendants 2 to 6 are directed to collect fees only through the accounts maintained in State Bank of India, Ambur Main Branch and State Bank of India, Solur Branch and submitted proper accounts into the Court, there is possibility of the defendants 2 to 6 to misuse the accounts to usurp the fees to themselves and thereby, cause financial detriment to the trust as well as the school. Hence, the plaintiffs are seeking an order of interim relief.

12. Resisting the Interlocutory Applications, the 4th defendant filed counter, which was adopted by the other defendants stating as under:

The 1st plaintiff and the 4th defendant were close friends and the 1st plaintiff approached the 4th defendant and convinced him to open a school in the 2nd defendant's land at Solur village in 2011, which was the absolute property of the 2nd defendant and the 2nd defendant also gave the property to defendants 4 and 5 to open a school. For the said purpose, a trust was formed in the name and style of Prem Educational Trust on 11.5.2011 comprising the plaintiffs and defendants 2 to 6 as trustee with the initial fund of Rs.5001/-. The plaintiffs and the defendants 2 to 6 contributed Rs.5.00 lakhs each to the trust and constructed RCC building with 8 class rooms in the name of Future School and was started in the academic year 2011-2012 with class I to VIII initially. The 4th defendant was elected and selected as Correspondent of the school by the trustees and the 4th defendant alone was looking after the day-to-day affairs of the school.

13. The school is managed by the 4th defendant from its inception to till date. The 1st plaintiff never acted in a transparent manner in conducting the affairs of the trust as well the school and the school accounts were not properly audited. It is admitted that the defendants 2, 4 and 5 by mortgaging their own property availed loan from State Bank of India, Walaja Branch to put up additional building for class rooms IX to XII and they have not availed any sums for their personal use from the above loan availed for the trust. The trust has no immovable property at any time.

14. It is stated that after inauguration of the school, the plaintiffs evaded to put any money and they assured and did not participate in the business of the trust. The defendants 2 to 6 some how managed to construct necessary class rooms and administration of school by borrowing from sundry creditors and pledging personal jewels in the Bank. The defendants 2, 4 and 5 on their individual capacity as absolute owners of the property pledge the property to the State Bank of India, SME Branch, Walaja for raising loan to the tune of Rs.2.05 Crores for the trust. However, they availed only Rs.1.40 Crores.

15. It is stated that between 7.3.2015 and 30.3.2015, the 1st plaintiff took Rs.46.25 lakhs by way of transfer to his individual account and Rs.15.00 lakhs to 3rd plaintiff's account. Without intimation to the other trustees, the 1st plaintiff withdrew Rs.52.50 lakhs by way of self cheque and Rs.1.40 lakhs by way of money transfer to Ramaraj Industries account to meet out his personal needs. When the same was questioned by the defendants 2 to 6, the plaintiffs evaded to answer or repay the amount. Bank EMI dues were paid by the defendants 2 to 6 by pledging their personal loans and after borrowing from sundry creditors to the tune of Rs.2.44 Crores. The defendants 2 to 6 have lodged a police complaint in respect of the misappropriation of the funds and the same is pending. Further, the plaintiffs 1, 3 and 5 have become debtors for various persons and banking institutions. Many cheque bouncing, cheating, labour dispute and arbitration cases are pending against the the plaintiffs. In fact, many creditors have come

to school and enquired about the whereabouts of plaintiffs 1, 3 and 5.

16. It is also stated that since the plaintiffs acted adverse to the interest of the trust and misappropriated the trust fund, they were called upon to attend a meeting of the Board of Trustees to deliberate why they should not be removed from the trust. Instead attending the meeting, the plaintiffs have sent a reply with false allegations. In the meeting held on 5.11.2017 at Future School premises, resolutions were passed unanimously and as per resolution No.5, the 2nd defendant was selected as Managing Trustee of the trust from 05.11.2017 and as per resolution No.7, the 1st plaintiff was removed from the post of life trustee. The supplementary trust deed was also executed and registered in SRO, Ambur. On 15.12.2017, the plaintiffs have entered into the school premises and had taken away records of the students and related CBSC documents from the office room. Again on 29.1.2018, the plaintiffs 1 and 3 with their henchmen came to the school and was trying to dispossess the defendants 2 to 6 from the school, however, the same was prevented, which necessitated the defendants 2 to 6 in filing suit in O.S.No.17 of 2018 before the Sub-Court, Vaniyambadi for permanent injunction against the plaintiffs and the same is pending. Suppressing the filing of the suit by the defendants 2 to 6, the plaintiffs have filed the present suit. Since the plaintiffs have not approached the Court with clean hands, the defendants 2 to 6 prayed for dismissal of the Interlocutory Applications.

17. Before the trial Court, on the side of the plaintiffs, Exs.P1 to P4 were marked and on the side of the defendants, Exs.R1 to R19 were marked.

18. Upon consideration of the rival submissions and also the documents produced before it, the trial Court, dismissed I.A.Nos.62 and 63 of 2018 by separate order. Aggrieved by the same, the plaintiffs have filed these Civil Miscellaneous Appeals.

19. The learned counsel for the petitioners/plaintiffs submitted that the order of the trial Court dismissing the petitions for injunction is contrary to law and wholly unjust. He would submit that the Court below should have seen that there is no provision under the trust deed whereby the plaintiffs could be excluded or removed from the office of the trusteeship. Further, in the absence of any power of removal, a trustee cannot be excluded from participating into the day-today affairs of the trust.

20. The learned counsel further submitted that without any justification, the trial Court erred in observing that amounts were illegally transferred by the plaintiffs. The plaintiffs

were instrumental in the creation of the trust and running of the institutions and the Court below should have granted relief for injunction as prayed for.

21. The learned counsel next submitted that the Court below should have seen that the defendants have filed the written statement and the nature of the suit only warrants a determination as to whether any power is conferred on the defendants 2 to 6 to remove the plaintiffs as trustees. In the case on hand, the Board of Trustees shall hold the office subject to Clause 15 of the trust deed. Class 15 of the trust deed enables him to nominate a successor and in no circumstances a trustee could be removed without an opportunity being given and the reasons to be disclosed on a duly convened meeting.

22. Per contra, reiterating the findings of the trial Court, the learned counsel for the respondents/defendants contended that since the plaintiffs acted adverse to the interest of the trust and also misappropriated the trust fund, they have been removed from the trusteeship. The above removal of the plaintiffs from the trust as trustees was also published in the Tamil daily Dhina Thanthi, Vellore Edition to alert the public and the parents of the student and creditors of the 1st plaintiff. He would submit that aggrieved by the removal of the plaintiffs from the trusteeship, they came to the school premises and threatened the defendants 2 to 6 and the school staff.

23. The learned counsel further submitted that on 29.1.2018, the plaintiffs 1 and 3 came to the school to dispossess the defendants 2 to 6 from the school. Since the plaintiffs have attempted to give trouble to the administration of the school, the respondents 2 to 6 have filed O.S.No.17 of 2018 before the Sub-Court, Vaniyambadi for permanent injunction against the plaintiffs restraining the defendants 2 to 6 from interfering with the plaintiffs peaceful possession and enjoyment in the suit property and the same is pending. Suppressing the said fact, the plaintiffs have filed the present suit. Since the plaintiffs have not made out the prima facie case, the trial Court dismissed both the Interlocutory Applications and the order of the trial Court warrants no interference.

24. I have heard Mr.V.Raghavachari, learned counsel for the appellants and Ms.S.Thamizharasi, learned counsel for the respondents in both the CMAs and also perused the materials available on record.

25. The 1st defendant trust was formed on 11.5.2011 comprising the plaintiffs and defendants 2 to 6 as trustees with initial fund of Rs.5,001/- and the 1st plaintiff was the Chairperson of Board of Trustees. The main object of the trust

is to begin a school in the name and style of Future School in the 2nd respondent's land to provide quality CBSE education to the people in and around Ambur. A lease deed for 3.09 ½ acre was executed by the defendants 2, 4 and 5 in favour of the 1st defendant trust on a monthly rent of Rs.1,000/- for 32 years for construction of a school building. The defendants 2 to 6 have contributed Rs.5.00 lakhs each to the trust and initially constructed 8 class rooms.

26. The admitted facts are, the plaintiffs and the defendants 2 to 6 are the trustees of the 1st defendant trust and the 1st plaintiff was the Chairperson of the Board of Trustees; the plaintiffs and the defendants 2 to 6 have opened a school in the name of Future School under the trust.

27. According to the plaintiffs, they have handled the trust fund transparently and they did not use any amount of the trust for their personal use. On the other hand, it is the case of the defendants 2 to 6 that between 07.03.2015 to 30.03.2015 the 1st plaintiff took Rs.46.25 lakhs by way of transfer to his individual account and Rs.15.00 lakhs to 3rd plaintiff's account and the 1st plaintiff withdraw Rs.50.00 lakhs by way of self cheques and also Rs.1.40 lakhs by way of money transfer to Ramaraj Industries account from the trust account to meet out his personal needs without intimation to any other trustees and also without any deliberation over the said issue.

28. Though the plaintiffs have stated that they have handled the trust fund transparently and have not misappropriated the trust fund for their personal use, there is no specific denial made by the plaintiffs in Ex.P3-reply sent to Ex.P2-notice. To show that the fund of the 1st defendant trust was transferred to some other Bank accounts, the defendants have produced Exs.R4 and R5-bank statements issued by State Bank of India, SME Branch, Walaja and State Bank of India, Solur.

29. According to the plaintiffs, in order to usurp the entire affairs of the trust as well as the school, without any basis, defendants 2 to 6 have called upon a meeting on 05.11.2017 at 10.30 A.M. in relation to removal of the plaintiffs from the trust. According to the plaintiffs, the defendants 2 to 6 have no right to call for such meeting with an agenda to remove the founder trustee for life. By a resolution dated 05.11.2017, the defendants 2 to 6 have unilaterally resolved removing the plaintiffs from the 1st defendant trust and also the defendants 2 to 6 have registered a supplemental deed of trust.

30. According to the defendants 2 to 6, despite service of notice, the plaintiffs have failed to attend the meeting on 05.11.2017. The defendants 2 to 6, who were managing the 1st

defendant trust, had participated in the meeting and in the meeting dated 05.11.2017 eight resolutions were passed unanimously. As per resolution No.4, the plaintiffs were removed from the post of trustees; resolution No.5 deals with the selection of the 2nd defendant as the Managing Trustee of the 1st defendant trust from 05.11.2017 and as per resolution No.7, the 1st plaintiff was removed from life trustee post.

31. If really, the plaintiffs have not committed any fault in the administration of the trust and also not misappropriated any amount, nothing prevented them from attending the meeting scheduled on 05.11.2017. Though the plaintiffs contended that the defendants 2 to 6 have no right to convene a meeting, nothing has been produced to establish the same.

32. As rightly held by the trial Court, the plaintiffs and the defendants 2 to 6 were the trustees having equal interest in the 1st defendant trust as well as in the School. Since the plaintiffs have filed the suit to declare that the resolution dated 05.11.2017 and the supplemental deed of trust dated 09.11.2017 as null and void, the right of the defendants 2 to 6 to convene a meeting and removal of the plaintiffs by way of resolution dated 05.11.2017 are all matters of evidence and the same could be decided only after the trial. Moreover, nothing has been produced by the plaintiffs to show that they have acted in accordance with the object of the trust.

33. A perusal of Exs.R17, R18 and R19, it is seen that at the request of the 1st plaintiff, the Bank put hold on Account No.33850373275. According to the defendants 2 to 6, the 1st plaintiff put hold on the Account No.33850373275 from operation of the 4th defendant. The same has been suppressed by the plaintiffs in their petitions, but they want to direct the defendants to receive all the school fees due to be paid by the students to be given through the above said bank Account No.33850373275.

34. As rightly argued by the learned counsel for the defendants that if the school fees are given credit in the trust account and the 4th defendant is prevented from operating the same, then how the school could be run was not properly explained by the plaintiffs. There is also no proof to show that the act of the plaintiffs seem to be done in the interest of the trust and the school. Since more than 440 students are studying in the school, this Court finds that larger public interest is also involved.

35. One thing that needs to be pointed out is that the plaintiffs have moved the present suit originally before the Principal District Judge, Vellore on 05.02.2018 and numbered as O.S.No.36 of 2018 and the same was later transferred to the file

of the III Additional District Court, Vellore @ Tirupattur and re-numbered as O.S.No.10 of 2018. It is seen that on 05.02.2018 itself, the defendants 2 to 6 have filed suit in O.S.No.17 of 2018 before the Sub-Court, Vaniyambadi for permanent injunction against the plaintiffs and the same is pending.

36. Prima facie, it is evident that the defendants 2 to 6 are now administering the 1st defendant trust and the school, which would be evident from the averments set out in the petition being C.M.P.No.20773 of 2018 filed by the plaintiffs to produce accounts of the 1st defendant trust from 01.01.2014 to till date.

37. The trial Court, while dismissing Interlocutory Applications observed that since the plaintiffs have taken funds of the trust for their personal use and they failed to attend the meeting held on 05.11.2017 at Future School, they cannot claim without cancelling the resolution of removal from trust either to restrain the defendants 2 to 6 from preventing the plaintiffs from discharging their duties as trustees of the trust of the 1st defendant or to grant mandatory injunction directing the defendants 2 to 6 to collect the fees from the students through the Bank account of the 1st defendant trust. In my view, there is no perversity in the aforesaid observation of the trial Court for the reason that prima facie some clinching evidence was available to come to the conclusion that the plaintiffs have not acted in the interest of the trust and the school.

38. The prayer of the plaintiffs is to grant mandatory injunction to the defendants 2 to 6 to collect fees from the students during the ensuing academic year 2018-19 only through Bank account of 1st defendant trust cannot be granted at this stage as one of reliefs sought for in the suit itself is the same. Further, when the contention of the plaintiffs is that the defendants 2 to 6 will usurp to themselves fees to be remitted by the students admitted for ensuing academic year without maintaining proper account, it is bounden duty of the plaintiffs to prove the same. Admittedly, in the case on hand, the plaintiffs have marked only four documents as Exs.P1 to P4. Ex.P1 is the copy of declaration of trust; Ex.P2 is the notice issued by the defendants 2 to 6 to the plaintiffs; Ex.P3 is the reply sent by the 1st plaintiff, wherein it has been stated that the 1st plaintiff alone entitled to call for the meeting and the defendants have called for meeting without his consent. Except the above, nothing has been stated by the 1st plaintiff in his reply Ex.P3. P4 is the letter send by the defendants 2 to 6 to the plaintiffs calling upon them to attend the Board of Trustees meeting on 05.11.2017.

39. As stated supra, nothing has been produced by the plaintiffs to show that on the date of filing of the suit, they were in possession of the property i.e., trust and also the plaintiffs have not produced any materials to show that the administration of the school is with them. It is settled position of law that the party who is not in possession is not entitled for an injunction. However, rights of the parties can be decided only in the suit.

40. It is well settled that for grant of temporary injunction the factors to be satisfied are - (i) prima facie case; (ii) balance of convenience and (iii) irreparable loss.

41. Prima facie case does not mean that the plaintiff should have a cent percent case which will in all probability succeed in trial. Prima facie case means that contentions which the plaintiff is raising, require consideration in merit and are not liable to be rejected summarily.

42. To see balance of convenience, it is necessary to compare case of parties, comparative mischief or inconvenience which is likely to sue from withholding the injunction will be grater than which is likely to arrive from granting it.

43. There are many injuries incapable of being repaired but a Court of equity does not regard them as 'irreparable'. Ordinarily injury is irreparable when without fair and reasonable address of Court, it would be denial of justice. Very often an injury is irreparable where it is continuous and repeated or where it is remediable at law only by a multiplicity of suits. Sometime the term irreparable damage refers to the difficulty of measuring the amount of damages inflicted. However, a mere difficulty in proving injury does not establish irreparable injury.

44. A temporary injunction can be granted only if the person seeking injunction has a concluded right, capable of being enforced by way of injunction. Temporary injunction is an equitable remedy as well as it is governed by law. Therefore, equitable principles are of very much importance in granting or rejecting injunction. Equitable principle is that, he who seeks equity must come with clean hands. The Hon'ble Apex Court as well as this Court, time and again held that, one must come with clean hands to claim the discretionary relief of temporary injunction.

45. For seeking interim mandatory injunction and/or interim injunction, apart from prima facie case and balance of convenience, there should be irreparable loss or injury to the person seeking the relief. In the present, the plaintiffs have not made out any prima facie case, balance of convenience in

their favour and also any irreparable loss or injury to be incurred by them.

46. Order 39, Rule 1 and 2 of CPC reads as follows:

> "1.Cases in which temporary injunction may be granted – Where in any suit is is proved by affidavit or otherwise -
>
> (a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or
>
> (b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors.
>
> (c) that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the Court thinks fit, until the disposal of the suit or until further orders.
>
> 2. Injunction to restrain repetition or continuance of breach -
>
> (1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained, of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.
>
> (2) The Court may by order grant such injunction, on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as the Courts thinks fit."

47. It is settled that interim order in mandatory nature should not be granted, when the relief sought for is similar to that of the main prayer, since such order would render the suit itself infructuous. As per the pronouncement of the Hon'ble Apex Court, grant of interim mandatory injunction in such cases suffers from manifest error.

48. Interim mandatory injunction can be granted only when there is a very strong prima facie case, apart from other aspects regarding irreparable loss and the balance of convenience and tests to be satisfied are far from stringent in case of an interim mandatory injunction and can be granted only in exceptional cases. The present case is not an exceptional case.

49. In Dorab Cawasji Warden v. Coomi Sorab Warden and others, reported in 1990 (2) SCC 117, the Hon'ble Supreme Court held:

> "The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, Courts have evolved certain guidelines. Generally stated these guidelines are:
> "1.The plaintiff has a strong case for trial. That is, it shall be a higher standard than a prima facie case that is normally required for a prohibitory injunction.
> 2.It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.
> 3.The balance of convenience is in favour of the one seeking such relief."

50. In the light of the above, it is clear that for issuance of prohibitory injunction under Order 39, Rule 1 and 2 CPC, prima facie case and balance of convenience is a basic requirement. However, in case of interim mandatory injunction, there should be a strong case for trial in favour of the person seeking injunction, the balance of convenience should also be in favour of the person or persons seeking such relief and there should be a circumstance that if mandatory injunction is not granted there would be irreparable loss or injury to the person seeking the relief, otherwise interim mandatory injunction cannot be granted.

51. In the instant case, it is not in dispute that the suit filed by the defendants 2 to 6 seeking injunction in O.S.No.17 of 2018 and the suit filed by the plaintiffs against the defendants seeking declaration, mandatory injunction and permanent injunction in O.S.No.10 of 2018 are pending before the trial Court. On a perusal of the typed set of papers, it is seen that in the suit filed by the defendants 2 to 6 before the Subordinate Judge, Vaniyambadi in O.S.No.17 of 2018, the defendants 2 to 6 have moved an application being I.A.No.79 of 2018 under Order 39, Rule 1 and 2 seeking temporary injunction restraining the plaintiffs herein from interfering with the peaceful possession and enjoyment of the suit property in any manner directly or indirectly till the disposal of the suit. Since the plaintiffs have not filed the counter, I.A.No.79 of 2018 was allowed on 02.8.2018. It is also seen that the plaintiffs have filed I.A.N.482 of 2018 to set aside the ex parte order passed in I.A.No.79 of 2018. Admittedly, the plaintiffs were not in possession and management of the trust and the school on the date of filing of the suit. Moreover, there are triable issues in both the suits based on oral and documentary evidence to be adduced by both parties.

52. In the present case, there is no strong prima facie case, apart from balance of convenience and irreparable loss or injury in favour of the plaintiffs to grant interim injunctions as prayed for in I.A.Nos.62 and 63 of 2018. Further, the prayer for injunctions in the suit and the prayer in I.A.Nos.62 and 63 of 2018 before the trial Court are one and the same.

53. In such circumstances, this Court is of the view that the plaintiffs are not entitled to interim mandatory injunction directing the defendants 2 to 6 to collect fees from students admitted to Future School during the ensuing academic year 2018-19 only through the Bank account of the 1st defendant trust maintained in State Bank of India, Ambur Branch with Account No.33850373275 and also interim injunction restraining the defendants 2 to 6, their men and agents from preventing the plaintiffs from discharging their function as trustee of the 1st defendant trust.

54. Since the plaintiffs have not made out a prima facie case in their favour and had not approached the Court with clean hands, the trial Court dismissed I.A.Nos.62 and 63 of 2018. This Court could find no illegality or infirmity in the impugned orders passed by the trial Court and the Civil Miscellaneous Appeals are liable to be dismissed. However, to meet the ends of justice, this Court is of the view to direct the trial Court to dispose of the suits independently on merits as expeditiously as possible, after providing reasonable opportunity to both parties, if suits are ripe for trial.

55. In the result:

(a) both the Civil Miscellaneous Appeals are dismissed, by confirming the order dated 24.10.2018 passed in I.A.Nos.62 and 63 of 2018 in O.S.No.10 of 2018 on the file of the learned III Additional District Court, Vellore @ Tirupattur;

(b) it is made clear that the views expressed by this Court are only prima facie views for disposal of the Civil Miscellaneous Appeals;

(c) the trial Court is directed to dispose the suit in O.S.No.10 of 2018 within a period of three months from the date of receipt of a copy of this order, on merits and in accordance with law uninfluenced by the order of this Court;

(d) both parties are directed to give their fullest co-operation for early disposal of the suit. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vs

To

The III Additional District Judge,
Vellore @ Tirupattur.

+2ccs to Mr.V.Raghavachari, Advocate, S.R.No.5296 & 5297
+2ccs to Mr.S.Thamizharasi, Advocate, S.R.No.5280

C.M.A. Nos.2724 and 2739 of 2018
and
CMP.Nos.20600 and 20773 of 2018

KJ(CO)

rrs 26/02/2019